



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1878

by Rep. Thomas Holbrook

SYNOPSIS AS INTRODUCED:

See Index

Amends the Clean Coal FutureGen for Illinois Act. Defines "operational phase". Provides that if the FutureGen Alliance selects as its location for CO2 storage a designated site or sites in the State of Illinois suitable for injection of captured CO2 into the Mount Simon Formation (rather than at the Tuscola or Mattoon site), then the Operator shall retain the rights, title, and interest in and to and any liabilities associated with the pre-injection CO2. Provides that the Operator shall retain all rights, title, and interest in the sequestered CO2 during the operational phase of the FutureGen Project. Provides that following the operational phase of the FutureGen Project, the Operator shall transfer and convey and the State of Illinois shall accept and receive, with no payment due from the State of Illinois, all rights, title and interest in and to and any liabilities associated with the sequestered CO2. Provides that the Operator (rather than the Department) shall procure a certain insurance policy that insures the Operator against any qualified loss stemming from a public liability action and with coverage limits of at least \$15,000,000. Provides that the Operator shall establish and fund a newly-created CO2 Storage Trust Fund to complement commercially-available insurance products and to support the Operator's ability to satisfy financial assurance obligations that may be required by law or the terms of the Operator's permit issued by the Agency. Provides that the State shall indemnify and hold harmless the Operator against any qualified loss stemming from a public liability action to the extent that the qualified loss is not covered under the insurance policy required under the Act and to the extent that the CO2 Storage Trust Fund lacks adequate funds to cover the loss. Extends the repeal date from March 1, 2011 to March 1, 2015. Makes other changes. Effective immediately.

LRB097 09017 ASK 49151 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Clean Coal FutureGen for Illinois Act is
5 amended by changing Sections 15, 20, 25, 30, and 998 as
6 follows:

7 (20 ILCS 1107/15)

8 (Section scheduled to be repealed on March 1, 2011)

9 Sec. 15. Definitions. For the purposes of this Act:

10 "Agency" means the Illinois Environmental Protection
11 Agency.

12 "Captured CO2" means CO2 and other trace chemical
13 constituents approved by the Agency for injection into the
14 Mount Simon Formation.

15 "Carbon capture and storage" means the process of
16 collecting captured CO2 from coal combustion by-products for
17 the purpose of injecting and storing the captured CO2 for
18 permanent storage.

19 "Carbon dioxide" or "CO2" means a colorless, odorless gas
20 in the form of one carbon and 2 oxygen atoms that is the
21 principal greenhouse gas.

22 "Department" means the Department of Commerce and Economic
23 Opportunity.

1 "Director" means the Director of Commerce and Economic
2 Opportunity.

3 "Federal Department" means the federal Department of
4 Energy.

5 "FutureGen Alliance" is a 501(c)(3) non-profit consortium
6 of coal and energy producers created to benefit the public
7 interest and the interest of science through the research,
8 development, and demonstration of near zero-emission coal
9 technology, with the cooperation of the Federal Department.

10 "FutureGen Project" means the public-private partnership
11 between the Federal Department and the FutureGen Alliance that
12 will control captured CO2 and will construct and operate a
13 pipeline and storage field for captured CO2.

14 "Mount Simon Formation" means the deep sandstone reservoir
15 into which the sequestered CO2 is to be injected at a depth
16 greater than 3,500 feet below ground surface and that is
17 bounded by the granitic basement below and the Eau Claire Shale
18 above.

19 "Operator" means the FutureGen Alliance and its member
20 companies, including their parent companies, subsidiaries,
21 affiliates, directors, officers, employees, and agents, or a
22 not-for-profit successor-in-interest approved by the
23 Department.

24 "Operational phase" means the period of time during which
25 the Operator injects and monitors CO2 into the Mount Simon
26 Formation in accordance with its permit approved by the Agency

1 for the FutureGen Project.

2 "Post-injection" means after the captured CO2 has been
3 successfully injected into the wellhead at the point at which
4 the captured CO2 is transferred into the wellbore for carbon
5 sequestration and storage into the Mount Simon Formation.

6 "Pre-injection" means all activities and occurrences prior
7 to successful delivery into the wellhead at the point at which
8 the captured CO2 is transferred into the wellbore for carbon
9 sequestration and storage into the Mount Simon Formation,
10 including but not limited to, the operation of the FutureGen
11 Project.

12 "Public liability" means any civil legal liability arising
13 out of or resulting from the storage, escape, release, or
14 migration of the post-injection sequestered CO2 that was
15 injected by the Operator and for which title is transferred to
16 the State pursuant to Section 20 of this Act. The term "public
17 liability", however, does not include any legal liability
18 arising out of or resulting from the construction, operation,
19 or other pre-injection activity of the Operator or any other
20 third party.

21 "Public liability action" or "action" means a written
22 demand, lawsuit, or claim from any third party received by the
23 Operator seeking a remedy or alleging liability on behalf of
24 Operator resulting from any public liability.

25 "Sequestered CO2" means the captured CO2 from the FutureGen
26 Project operations that is injected into the Mount Simon

1 Formation by the Operator.

2 (Source: P.A. 95-18, eff. 7-30-07; 96-1491, eff. 12-30-10.)

3 (20 ILCS 1107/20)

4 (Section scheduled to be repealed on March 1, 2011)

5 Sec. 20. Title to sequestered CO2 ~~gas~~. If the FutureGen
6 Alliance selects as its location for CO2 storage a designated
7 site or sites ~~Project locates at either the Tuscola or Mattoon~~
8 ~~site~~ in the State of Illinois suitable for injection of
9 captured CO2 into the Mount Simon Formation, then the ~~FutureGen~~
10 ~~Alliance agrees that the Operator shall transfer and convey and~~
11 ~~the State of Illinois shall accept and receive, with no payment~~
12 ~~due from the State of Illinois, all rights, title, and interest~~
13 ~~in and to and any liabilities associated with the sequestered~~
14 ~~gas, including any current or future environmental benefits,~~
15 ~~marketing claims, tradable credits, emissions allocations or~~
16 ~~offsets (voluntary or compliance based) associated therewith,~~
17 ~~upon such gas reaching the status of post injection, which~~
18 ~~shall be verified by the Agency or other designated State of~~
19 ~~Illinois agency. The Operator shall retain all rights, title,~~
20 ~~and interest in and to and any liabilities associated with the~~
21 ~~pre-injection CO2 sequestered gas. The Operator shall retain~~
22 all rights, title, and interest in the sequestered CO2 during
23 the operational phase of the FutureGen Project. Following the
24 operational phase of the FutureGen Project, the Operator shall
25 transfer and convey and the State of Illinois shall accept and

1 receive, with no payment due from the State of Illinois, all
2 rights, title and interest in and to and any liabilities
3 associated with the sequestered CO2. Illinois State Geological
4 Survey of the University of Illinois shall monitor, measure,
5 and verify the permanent status of sequestered carbon dioxide
6 and co sequestered gases in which the State has acquired the
7 right, title, and interest under this Section.

8 (Source: P.A. 95-18, eff. 7-30-07; 95-728, eff. 7-1-08 - See
9 Sec. 999.)

10 (20 ILCS 1107/25)

11 (Section scheduled to be repealed on March 1, 2011)

12 Sec. 25. Insurance against qualified losses.

13 (a) The Operator Department shall procure an insurance
14 policy from a private insurance carrier or carriers, if and to
15 the extent that such a policy is available at a reasonable
16 cost, that insures the Operator against any qualified loss
17 stemming from a public liability action. The coverage limits
18 for such an insurance policy shall be at least \$15,000,000
19 policy must be procured in accordance with the provisions of
20 the Procurement Code.

21 (a-5) The Operator shall establish and fund a newly-created
22 CO2 Storage Trust Fund.

23 (1) The purpose of the CO2 Storage Trust Fund shall be
24 to complement commercially-available insurance products
25 and to support the Operator's ability to satisfy financial

1 assurance obligations that may be required by law or the
2 terms of the Operator's permit issued by the Agency.

3 (2) The funds in the CO2 Storage Trust Fund may used to
4 satisfy any qualified loss stemming from a public liability
5 action to the extent that such loss is not otherwise
6 covered by an insurance policy. The funds may also be used
7 to pay reasonable administrative costs associated with
8 managing and resolving claims associated with the CO2
9 Storage Trust Fund. The funds may also be used for well
10 closure, post-injection monitoring, or other activities
11 for which a law or permit requires financial assurance.

12 (3) The CO2 Storage Trust Fund shall be funded in the
13 following manner, toward a maximum amount of \$50,000,000
14 per 100 million metric tons of CO2 storage site design
15 capacity, unless the permit approved by the Agency requires
16 a higher maximum amount:

17 (A) The CO2 Storage Trust Fund shall be funded with
18 an initial payment of 20% of the total projected
19 maximum amount of the fund by the Operator at least 30
20 days prior to the first day of regular CO2 injection
21 operations are forecasted to begin into the Mount Simon
22 Formation in accordance with its permit approved by the
23 Agency.

24 (B) Subsequent future payments to the CO2 Storage
25 Trust Fund shall be made during the during the
26 Operational Phase of the Project according to the

1 following formula:

2 For each million metric tons of sequestered CO2, the
3 subsequent future payments to the CO2 Storage Trust Fund
4 shall be determined by taking the difference between the
5 trust fund maximum amount and the initial payment divided
6 by the CO2 storage site capacity, measured in million
7 metric tons, designated in the Operator's permit with the
8 Agency. If 100 million metric tons was the total design
9 capacity of the CO2 storage facility, then the subsequent
10 annual future payments to the CO2 Storage Trust Fund would
11 be \$400,000 per million metric tons of CO2 injected.

12 (4) The Operator shall select, subject to the approval
13 of the Agency, an independent third-party trustee to
14 administer the CO2 Storage Trust Fund.

15 (b) Pursuant to Section 30 of this Act, the State shall
16 indemnify and hold harmless the Operator against any qualified
17 loss stemming from a public liability action to the extent that
18 the qualified loss is not covered under an insurance policy
19 under subsection (a) of this Section and to the extent that the
20 CO2 Storage Trust Fund lacks adequate funds to cover the loss.

21 (c) The Department shall pay any insurance premium,
22 deductible, or liability under subsections (a) or (b) from
23 appropriations by the General Assembly for that purpose. It is
24 the intent of this Act that, to the extent practical, any
25 unexpended balance of the proceeds from the sale of emission
26 reduction rights or tradable credits to which the State has

1 title under Section 20 should be used for the purposes of this
2 subsection (c).

3 (d) If the FutureGen Alliance identifies a designated site
4 or sites in Illinois suitable for injection of captured CO2
5 into the Mount Simon Formation, ~~locates the FutureGen Project~~
6 ~~at either the Mattoon or Tuscola site in the State of Illinois,~~
7 then the Department shall be authorized to contract with the
8 FutureGen Alliance, under terms not inconsistent with this Act,
9 in order to define the rights and obligations of the FutureGen
10 Alliance and the Department, including but not limited to, the
11 insurance and indemnification obligations under Sections 25
12 and 30 of this Act.

13 (e) If federal indemnification covers all or a portion of
14 the obligations assumed by the State under Section 25 of this
15 Act, such State obligations shall be reduced in proportion to
16 the federal indemnification and be considered subordinated to
17 any federal indemnification.

18 (g) For the purpose of this Section, "qualified loss" means
19 a loss by the Operator stemming from a public liability action
20 other than those losses arising out of or relating to:

21 (1) the intentional or willful misconduct of the
22 Operator ~~in its operation of the FutureGen Project;~~

23 (2) the failure of the Operator to comply with any
24 applicable law, rule, regulation, or other requirement
25 established by the Federal Department, Agency, or State of
26 Illinois for the carbon capture and storage of the

1 sequestered CO2 gas, including any limitations on the
2 chemical composition of any sequestered CO2 gas; or

3 (3) any the pre-injection activities operation of the
4 Operator FutureGen Project.

5 (Source: P.A. 95-18, eff. 7-30-07.)

6 (20 ILCS 1107/30)

7 (Section scheduled to be repealed on March 1, 2011)

8 Sec. 30. Indemnification. Notwithstanding any law to the
9 contrary, subject to and consistent with the conditions
10 provided in Section 25 of this Act, the State of Illinois shall
11 indemnify, hold harmless, defend, and release the Operator from
12 and against any public liability action asserted against the
13 Operator, subject to the following terms and conditions:

14 (a) The obligation of the State of Illinois to indemnify
15 the Operator does not extend to any public liability arising
16 out of or relating to:

17 (1) the intentional or willful misconduct of the
18 Operator ~~in its operation of the FutureGen Project~~;

19 (2) the failure of the Operator to materially comply
20 with any applicable law, rule, regulation, or other
21 requirement established by the Federal Department, Agency,
22 or State of Illinois for the carbon capture and storage of
23 the sequestered gas, including any limitations on the
24 chemical composition of any sequestered CO2 gas;

25 (3) any the pre-injection activities of the Operator

1 ~~operation of the FutureGen Project; or~~

2 (4) a qualified loss to the extent that it is paid
3 under an insurance policy under subsection (a) or from the
4 CO2 Storage Trust Fund under subsection (b) of Section 25
5 of this Act.

6 (b) The indemnification obligations of the State of
7 Illinois assumed under Section 30 of this Act shall be reduced
8 in proportion and be subordinated to any federal
9 indemnification that covers all or a portion of the State's
10 obligations.

11 (Source: P.A. 95-18, eff. 7-30-07.)

12 (20 ILCS 1107/998)

13 (Section scheduled to be repealed on March 1, 2011)

14 Sec. 998. Repeal. This Act is repealed on March 1, 2015
15 ~~2011~~.

16 (Source: P.A. 95-18, eff. 7-30-07; 96-1491, eff. 12-30-10.)

17 (20 ILCS 1107/23 rep.)

18 (20 ILCS 1107/50 rep.)

19 Section 10. The Clean Coal FutureGen for Illinois Act is
20 amended by repealing Sections 23 and 50.

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 20 ILCS 1107/15

4 20 ILCS 1107/20

5 20 ILCS 1107/25

6 20 ILCS 1107/30

7 20 ILCS 1107/998

8 20 ILCS 1107/23 rep.

9 20 ILCS 1107/50 rep.